

CANNISTRACI LAW FIRM

Sharonrose Cannistraci, CSBN 121827
236 N. Santa Cruz, Ave., Suite 217
Los Gatos, California 95030
Telephone: (408) 307-5662
Cannistracilaw@gmail.com

[additional counsel identified on p. 2]

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GATEWAY CITY CHURCH, a)	Case No.: 5:20-CV-8241-EJD
California nonprofit corporation, THE HOME)	
CHURCH. INC., a California nonprofit)	FIRST AMENDED COMPLAINT FOR
corporation, THE SPECTRUM CHURCH,)	DECLARATORY JUDGMENT AND
SAN FRANCISCO BAY AREA, INC., a)	INJUNCTIVE AND OTHER RELIEF
California nonprofit corporation, ORCHARD)	
COMMUNITY CHURCH OF CAMPBELL,)	
a California nonprofit corporation, TRINITY)	
BIBLE CHURCH, a California nonprofit)	
corporation,)	
)	
Plaintiffs,)	
vs.)	
)	
GAVIN NEWSOM, in his official capacity as)	
Governor of the State of California, SANDRA)	
SHEWRY, M.D., in her official capacity as)	
Acting Director of California Department of)	
Health, SARA H. CODY, M.D., in her official)	
capacity as Santa Clara County Public Health)	
Officer, COUNTY OF SANTA CLARA, a)	
public entity, and DOES 1-100,)	
)	
Defendants.)	
)	
)	

1 **PACIFIC JUSTIC INSTITUTE**

Kevin T. Snider
2 9851 Horn Rd, Suite 115
Sacramento, CA 95827
3 Telephone: (916) 857-6900
ksnider@pji.org

4 **McALLISTER LAW GROUP**

Marlis McAllister
5 PO Box 756
Pine Grove, CO 80470
6 Telephone: (650) 346-3792
marlis@mcallisterlaw.net

- 1
- 2 1. Religious rights have been suspended in California indefinitely during the pandemic.¹
- 3 “[Y]our constitutional rights don’t really matter right now . . . [W]e’re putting parts of the
- 4 Constitution on hold. We really are. Freedom of assembly. Right to practice religion,” so states a
- 5 Santa Clara County (SCC) Deputy District Attorney in charge of enforcing shutdown orders.²
- 6 2. The suspension of religious rights affects the rights of all 40 million people who live in
- 7 California.³ It is particularly harmful for the almost 20 million Californians to whom religion is
- 8 “very important,” according to a Pew Research Center study that also reported 12.5 million
- 9 Californians regularly attended weekly religious services before all places of worship were closed in
- 10 the State of California by state and health department orders.⁴
- 11 3. The shutdown orders are not temporary. They have no expiration date. They are indefinite.
- 12 “*This order shall remain in effect until I determine it is appropriate to modify the order based on*
- 13 *public health conditions.*”⁵ The shutdown orders have suspended constitutional rights for nine
- 14 months and will continue to do so for an indeterminate period. Even assuming a vaccine is widely
- 15 distributed, COVID-19 herd immunity will not likely be achieved until near the end of 2021,⁶ or

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18 ¹ Appendix A, Disparate Treatment Chart, summary of laws that burden religious gatherings and exempt secular gatherings, incorporated herein. Appendix B, Exhibit Lists to Complaint by Number and Subject Matter.

19 ² Rusch and Smith, *How Do You Enforce a Law That Tramples the Land of the Free?*, The New York Times, May 12, 2020. Exhibit 101 hereto incorporated herein.

20 ³ United States Census Bureau, *Quick Facts, Santa Clara County, California*. Exhibit 11 hereto incorporated herein.

21 ⁴ A Pew Research Center study shows 31% (about 12.5 million) of Californians attend religious services weekly; 54% (about 21.6 million) believe in God with “absolute certainty,” and for 47% (almost 19 million) religion is “very important” in their lives, according to a Pew Research Center, Religious Landscape Study, February 29, 2015. . Exhibit 92 hereto incorporated herein.

22 ⁵ Statewide Public Health Officer Order dated August 28, 2020, ¶ 6. Exhibit 25 hereto incorporated herein.

23 ⁶ Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, stated, “If you’re talking about getting back to a degree of normality . . . prior to Covid, it’s going to be well into 2021, maybe even

perhaps even later.

4. The federal Bill of Rights has been suspended indefinitely by the order of two unelected health officials who have elevated their own health orders above the United States Constitution. The health orders do not advance the stated compelling interest of curtailing the spread of a virus as they exempt secular gatherings that pose a similar or greater risk of spread, such as mass gatherings in airports and on mass transit and as they are not enforced against protests where hundreds or thousands are present in close proximity.

5. As defendant Sarah Cody of Santa Clara County Public Health (SCCPH) has acknowledged, religious gatherings are constitutional rights that are “vital” and any risks they pose can be mitigated:

[R]eligious gatherings ... are vital to people’s social and spiritual well-being. . . . Risks associated with these activities . . . can be mitigated . . . through measures that decrease exposure, ensure adequate social distancing, and limit intermixing between households.⁷

6. Religious gathering can be safely conducted with simple personal conduct measures. And, unlike at airports, on mass transit, and with protests, religious gatherings are conducted by spiritual leaders who are in a unique position to ensure their congregants act safely. The national Centers for Disease Control and Prevention (CDC) has published guidance for reopening places of worship in its *Considerations for Faith Communities*.⁸ CDC’s publication includes mitigation measures that are clear, simple and easy to follow.⁹ CDC considerations for communities of faith recognize that

towards the end of 2021.” Watts, *Fauci Says Normal Life may not be Back Until the end of 2021*, CNN Health, September 11, 2020. Exhibit 130 hereto incorporated herein.

⁷ County Health Order, May 18, 2020, Appendix C-2, ¶ (5). Exhibit 60 hereto incorporated herein.

⁸ Exhibit 6 hereto incorporated herein.

⁹ The CDC mitigation measures include promoting hygiene, encouraging wearing face masks, which is “most essential when social distancing is difficult,” intensification of cleaning, disinfecting, and ventilation, promoting social distancing, considering limiting size of gatherings, posting signs, monitoring for outbreaks, and protections that limit

1 human health is more than physical health. Human health includes the inner complex of the human
 2 soul which for many millions includes a profound need to worship, which is at the very heart of
 3 their existence. CDC states in pertinent part:

4 CDC offers the following general considerations to help communities of faith discern
 5 how best to practice their beliefs while keeping their staff and congregations safe.
 6 Millions of Americans embrace **worship as an essential part of life**. For many faith
 7 traditions, gathering together for **worship is at the heart** of what it means to be a
 8 community of faith. But as Americans are now aware, gatherings present a risk for
 increasing spread of COVID-19 during this Public Health Emergency. CDC offers
 these suggestions for faith communities to consider and accept, reject, or modify,
 consistent with their own faith traditions, in the course of preparing to reconvene for
 in-person gatherings while still working to prevent the spread of COVID-19.

9 This guidance is not intended to infringe on rights protected by the First Amendment
 10 to the U.S. Constitution or any other federal law... The federal government may not
 11 prescribe standards for interactions of faith communities in houses of worship, and in
 accordance with the First Amendment, **no faith community should be asked to**
 12 **adopt any mitigation strategies that are more stringent** than the mitigation
 strategies asked of similarly situated entities or activities.

13 In addition, we note that while many types of **gatherings** are important for civic and
 14 economic well-being, religious **worship has particularly profound significance** to
 communities and individuals, including as a right protected by the First Amendment.
 15 **State and local authorities are reminded to take this vital right into account**
 when establishing their own re-opening plans... (Emphasis added.)

16 CDC does not recommend closure of places of worship. CDC does not recommend banning
 17 children and youth programs in churches. CDC does not recommend remote services (except for
 18 those at higher risk for severe illness). CDC warns local health officials not to impose more
 19 stringent mitigation measures on religious gatherings than on similar secular gatherings. CDC does
 20 not recommend prohibiting singing. To the contrary, on its website, CDC posts a link to a recent
 21 scientific study published by the Aerosol Science and Technology Journal that studied the reduction
 22 of the spread of the virus by groups wearing masks while singing and concluded: “a common face
 23 mask also appears to be very efficient in reducing emissions” and when “singing loud with a

24 exposure to risk for staff and congregants at higher risk for severe illness from COVID-19, “including older adults and
 25 people of all ages with certain underlying medical conditions,” such as “remote participation in services.” *Ibid.*

1 surgical mask, almost no droplets were detected with the camera” and group singing can be
 2 appropriate when “prevention measures are applied, such as distancing, hygiene, ventilation and
 3 shielding.”¹⁰

4 7. In contrast, defendants are continually updating a web of state and county shutdown orders
 5 applicable to religious gatherings that include myriad competing provisions such as closures and
 6 maximum capacity restrictions, the stricter of which provisions applies.¹¹ Not only do the various
 7 orders differ in extent of restriction, but they conflict with each other and are difficult to reconcile.
 8 In addition, while the orders ban and restrict religious gatherings, including worship, singing, and
 9 children and youth education, programs, and activities in places of worship, they exempt similar
 10 secular gatherings in airport terminal gates, where people gather in close proximity for extended
 11 periods (similar in duration, proximity, and numbers to religious gatherings) and allow secular
 12 children and youth programs.

13 8. From March 17, 2020, to October 13, 2020, all places of worship in Santa Clara County
 14 were closed completely to indoor worship.¹² For seven months, not one pastor could assemble with
 15 one parishioner in any church in 15 cities within 1,312 square miles in a population of 1,900,000
 16 people.¹³ There were no exceptions, not even if two people wore surgical masks and physically
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18 ¹⁰ Alsved, Matamis, Bohlin, *et al.*, *Exhaled Respiratory Particles During Singing and Talking*, Aerosol Science
 19 and Technology, September 17, 2020. Exhibit 94 hereto incorporated herein.

20 ¹¹ Depending on “tier” status, the state shutdown orders close places of worship or restrict maximum capacity,
 21 prohibit worship in song, and prohibit religious children and youth education, programs, and activities (effectively
 22 abolishing Sunday School, Children’s Church, Vacation Bible School, Youth Camps, etc.), and allow county health
 23 orders to impose stricter rules. SCCPH orders are among the strictest in the state, limiting places of worship beyond the
 24 restrictions imposed by the state. For a summary of the effect of the various orders, *see Appendix A* hereto incorporated
 25 herein.

¹² County Health Officer Order, March 16, 2020. Exhibit 57 hereto incorporated herein. County Health Officer
 Order, March 31, 2020. Exhibit 58 hereto incorporated herein. County Health Officer Order, April 29, 2020. Exhibit 59
 hereto incorporated herein. County Health Officer Order, May 18, 2020. Exhibit 60 hereto incorporated herein. County
 Health Officer Order, July 2, 2020. Exhibit 61 hereto incorporated herein.

¹³ County of Santa Clara, *About the County*. Exhibit 83 hereto incorporated herein.

1 distanced on opposite sides of the largest cathedral. From October 13, 2020, to November 16, 2020,
 2 places of worship were partially open to indoor activities on a highly restricted basis – only 25% of
 3 capacity or 100 people, whichever was less.¹⁴ They are now closed again to indoor worship.¹⁵

4 9. During that same period – March to November – defendants allowed 700,000 people to
 5 gather and mix together indoors in large groups at departure gates at Mineta San Jose International
 6 Airport (SJC), night and day, in close proximity in waiting areas at 30 terminal gates,¹⁶ allowed
 7 millions more to ride together on Bay Area Rapid Transit (BART),¹⁷ allowed thousands to gather in
 8 mass peaceful protests,¹⁸ and allowed children and youth to gather in secular programs (while not
 9 one child could interact with one other child in his own church).¹⁹

10 10. Even once the state reopens churches to indoor worship again, assuming it ever does, it has
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14 ¹⁴ *Mandatory Directive: Gatherings*, July 14, 2020 (revised October 9, 2020), p. 4. Exhibit 67 hereto
 14 incorporated herein.

15 ¹⁵ CDPH Statewide Public Health Officer Order, August 28, 2020. Exh. 25; Santa Clara County Tier Assignment.
 16 Exh. 26-2. Blueprint for a Safer Economy, Activity and Business Tiers, exhibit 27 hereto incorporated herein; CDPH
 17 *Regional Stay At Home Order*, December 3, 2020; exhibit 144 hereto incorporated herein; . *Mandatory Directive:
 Capacity Limitations*, November 15, 2020 (revised December 4, 2020); exhibit 159 attached hereto incorporated herein;
Mandatory Directive for Implementing State's Regional Stay At Home Order, December 4, 2020. Exhibit 150-1
 attached hereto incorporated herein.

18 And, while places of worship in Santa Clara County are shut down to indoor operations completely, under the SCC
 19 *Mandatory Directive on Capacity Limitations*, issued November 15, 2020 (revised December 4, 2020, the following
 20 operations remain open: shopping centers (20% capacity), retail stores (20% capacity), grocery stores (20% capacity), 4
 , public transit (to the extent people can maintain 6' distance from one another), and any other facility allowed to open
 to the public under the Regional Stay At Home Order and Local Orders (20% capacity). Exh. 159.

21 ¹⁶ Mineta San Jose International Airport, Monthly Activity Reports. Exhibits 85 and 153 hereto incorporated
 21 herein.

22 ¹⁷ Bay Area Rapid Transit Press Release, *BART Releases 15-Step Plan to Welcome Back Riders as Region
 Opens*, July 31, 2020. Exhibit 48 hereto incorporated herein.

23 ¹⁸ Ali-Ahmad, *Nearly Two Thousand Protestors Gather in Cupertino*, Estoque, June 12, 2020. Exhibit 121 hereto
 24 incorporated herein.

25 ¹⁹ See Appendix A.

no plan to open them indoors to more than 50% capacity.²⁰ Worse yet, SCCPH apparently has no plan to open churches in this county to any capacity greater than 25% or 100 people, whichever is fewer.²¹ Plaintiffs' congregations are not allowed to gather together. Yet, defendants allow unlimited large scale secular gatherings to remain together in close proximity for extended periods at airports and on mass transit and they do not enforce gathering orders against peaceful protestors.

11. A study by mental health professionals published by CDC concludes that shut-down orders are causing widespread mental and emotional harm to people including anxiety and depression disorders, trauma and stressor related disorder, substance abuse, and suicidal ideation.²² According to local mental health professionals, the isolation is also triggering eating disorders, stigma, secrecy, and shame.²³

12. The shutdown orders are causing additional serious harm as some churches have permanently closed.

13. This action seeks to restore the rights defendants have suspended. Plaintiffs are not seeking special treatment. They are only seeking equal protection under the law. Communities of faith can gather responsibly under the same rules as people gather at airport terminal gates, on mass transit, and at protests.

²⁰ CDPH COVID-19 INDUSTRY GUIDANCE: *Places of Worship and Providers of Religious Services and Cultural Ceremonies*, July 29, 2020. Exhibit 32 hereto incorporated herein. Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.

²¹ *Mandatory Directive: Gatherings*, July 14, 2020 (revised November 4, 2020), exhibit 69 hereto incorporated herein, p. 4; *Mandatory Directive: Capacity Limitations*, November 15, 2020, p. 2. Exhibit 70-1 hereto incorporated herein.

²² Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR)*, August 14, 2020. Exhibit 3 hereto incorporated herein.

²³ "The Eating Disorders Resource Center has added a new online support group for those whose unhealthy eating behaviors are triggered by the social isolation of the COVID-19 pandemic. . . . Many people struggle with the stigma, secrecy and shame that surround eating disorders," says Janice Bremis, the center's executive director. "A support group can be the first place one starts the recovery process'." Gelhaus, *Los Gatos Community Briefs for the Week of Nov. 13*, The Mercury News, November 8, 2020. Exhibit 138 hereto incorporated herein.

14. Plaintiffs bring this action on behalf of their churches and the members of their congregations. They are seeking urgent injunctive relief to enjoin shutdown orders that are causing actual harm and state on information and belief the allegations herein.

PARTIES TO THE ACTION

15. Plaintiff Gateway City Church is a multi-site church and California non-profit corporation organized exclusively for religious purposes with its principal place of business and worship in the City of San Jose, California, and with campuses and congregations in the counties of Santa Clara, Sonoma, Fresno, and Stanislaus, and in the states of Arizona and Nevada.

<https://mygatewaycity.church/>

16. Plaintiff The Home Church, Inc., is a church and California non-profit corporation organized exclusively for religious purposes with its principal place of business and worship in the City of Campbell, California. <https://www.thehomechurch.org/>

17. Plaintiff The Spectrum Church, San Francisco Bay Area, Inc., is a church and California non-profit corporation organized exclusively for religious purposes with its principal place of business and worship in the City of San Jose, California. <https://thespectrum.church/>

18. Plaintiff Orchard Community Church of Campbell is a church and California non-profit corporation organized exclusively for religious purposes with its principal place of business and worship in the City of Campbell, California. <https://orchardcommunity.org/>

19. Plaintiff Trinity Bible Church is a church and California non-profit corporation organized exclusively for religious purposes with its principal place of business and worship in the City of Morgan Hill, California. <https://trinitybiblechurch.org/>

20. Defendant Gavin Newsom (“Newsom”) is sued in his official capacity as Governor of the State of California (“state”) and Newsom resides in California.

21. Defendant Sandra Shewry, M.D. (“Shewry”) is sued in her official capacity as Acting Director of the California Department of Public Health (CDPH) who has adopted, ratified, maintained, and modified her predecessor’s public health orders and Shewry resides in California.

22. Defendant County of Santa Clara (SCC) is a public entity formed under the laws of the State of California, comprised of agencies, departments, and officials, including its Board of Supervisors, Office of the District Attorney, Office of County Counsel, Public Health department, and Office of the Sheriff (collectively “county”).

23. Defendant Sarah H. Cody, M.D. is Public Health Officer (“Cody”) for SCC Public Health (“SCCPH”) and is sued in her official capacity, and is a resident of Santa Clara County, California.

JURISDICTION

24. This Court has federal question jurisdiction over this civil rights action that raises questions of federal law and rights under the First, Fourth, Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments to the U.S. Constitution, actionable under federal law, including, 42 U.S.C. § 1983.

25. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

26. This Court has authority to grant the requested declaratory relief under 28 U.S.C. §§ 2201 and 2202, the requested injunctive relief under 28 U.S.C. §1343, and reasonable attorneys’ fees and costs under 42 U.S.C. § 1988. This Court’s jurisdiction includes the power to restrain emergency executive orders that restrict constitutional rights “pending proper judicial inquiry of whether an exigency existed and still exists that justifies attempts to restrict constitutional rights.” See *Sterling v. Constantin*, 287 U.S. 378 (1932).

VENUE

27. Venue is appropriate in this Court as a substantial number of the events that give rise to plaintiffs’ claims took place in this district and at least one defendant is located within this district.

INTRADISTRICT ASSIGNMENT

28. This case should be assigned to the San Jose Division of this District as the lawsuit arose in SCC and Plaintiffs, their congregations, and two defendants are located within SCC.

URGENT RELIEF REQUIRED

29. Newsom's shutdown orders suspended rights as of March 19, 2020.²⁴ On April 28, the state included "Clergy for essential support and faith-based services" in its designation of "Essential Critical Infrastructure Workers" that "work to protect communities, while ensuring continuity of functions critical to public health and safety" The state nonetheless allowed in person secular workforces but prohibited in person religious workforces.²⁵ Thus, the state's shutdown orders infringe on constitutional rights of peaceable assembly and free practice of religion. The county excludes churches from "essential activities" and "essential businesses."²⁶ These exclusions are the foundation for secular businesses to remain open while all places of worship are closed.

30. SCCPH has criminalized violations of local health orders.²⁷ This necessarily criminalizes the exercise of the right of assembly and practice of religion prohibited by the shutdown orders.

²⁴ Newsom Executive Order No. N-33-20. Exhibit 16 hereto incorporated herein. *Guidance for the Prevention of COVID-19 Transmission for Gatherings*, dated March 16, 2020. Exhibit 29 hereto incorporated herein. *Counties Statewide Can Reopen Places of Worship for Religious Services, etc.* Exhibit 44 hereto incorporated herein.

²⁵ Essential Workforce, p. 16, ¶ 16. Exhibit 28 hereto incorporated herein.

²⁶ County Health Officer Order, March 16, 2020, ¶ 10a ("essential activities" defined), ¶ 10f ("essential businesses" defined). Exh. 57. County Health Officer Order, March 31, 2020. Exh. 58. County Health Officer Order, April 29, 2020. Exh. 59. County Health Officer Order, May 18, 2020. Exh. 60. County Health Officer Order, July 2, 2020. Exh. 61.

²⁷ The county health order in effect at the time this complaint was filed states, "Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both." County Health Officer Order, October 5, 2020. Exhibit 62 hereto incorporated herein.

In response to a question whether there is the possibility of a criminal charge for violation of health orders, James William, Santa Clara County Counsel, stated, "Violation of the health orders is a crime, so that's absolutely something that's available." Noyes, *South Bay Church Holds Indoor Services as COVID-19 Fines Reach \$100k, Criminal Charge Possible*, ABC7News, September 7, 2020. Exhibit 129 hereto incorporated herein.

31. On August 28, 2020, the county enacted a new Ordinance No. NS-9.291 to enforce state and county health orders, which makes it a misdemeanor to obstruct either of the newly created “Enforcement Officer” and “Hearing Officer” or to obstruct the “Health Officer,” or their designees, who have the power to arrest and jail citizens, and convictions are punishable by up to one year in jail. In addition, violations of a health order are subject to a civil penalty of up to \$5,000 per day.²⁸ State law and county ordinances have similar power of arrest punishments.²⁹

32. The District Attorneys’ Office dispatches police departments to threaten to issue citations for non-compliance with health orders.³⁰ On Easter Sunday, April 12, 2020, for example, the day Christians all over the world celebrate the resurrection of their Lord and Savior Jesus Christ, the San Jose Police Department detained a pastor and disbursed members of the congregation who had gathered inside their cars in a drive-in theater parking lot to worship.³¹

33. The county has threatened to arrest and jail pastors for holding worship services³² and has sued pastors and churches and assessed fines of a combined \$450,000.00 against two churches

²⁸ In Ordinance No. NS-9.291, the County adopted the following punishment: “Any person who willfully resists, delays, or obstructs any Enforcement Officer, Health Officer, or Hearing Officer in the discharge or attempt to discharge any duty of his or her office or employment in connection with this Ordinance shall be guilty of a misdemeanor, punishable by a fine not exceeding \$1,000, or by imprisonment in a County jail not to exceed one year, or by both that fine and imprisonment...” Exhibit 49 hereto incorporated herein.

²⁹ The Health Officer or his or her designees may arrest a person without a warrant whenever he or she has reasonable cause to believe the person has violated the Santa Clara County Ordinance in his or her presence. Cal. Penal Code section 836.5, exhibit 13 hereto incorporated herein; Santa Clara County Ordinance Code section A18-32. Exhibit 52 hereto incorporated herein. The Ordinance authorizes the Health Officer to prohibit assembly during an epidemic. Santa Clara County Ordinance Code section A18-33. Exhibit 53 hereto incorporated herein.

³⁰ Rusch and Smith, *How Do You Enforce a Law That Tramples the Land of the Free?*, The New York Times, May 12, 2020. Exh. 101.

³¹ Harrington, *San Jose Church Hosting Easter Services at Drive-In Movie Theater*, The Mercury News, April 11, 2020. Exhibit 100 hereto and incorporated herein.

³² Reyes, *San Jose Church Fighting Back Against County as Pastor Faces Fines, Jail Time for Holding Indoor Services*, ABC7News, November 1, 2020. Exhibit 136 hereto incorporated herein.

1 alone.³³

2 34. The suspension of religious rights and harsh enforcement measures chill the rights of all
3 communities of faith to assemble peacefully and practice their religion.

4 35. As of November 19, 2020, SCC COVID-19 Demographics Dashboard posted a cumulative
5 total of 459 deaths and 29,631 cases since the pandemic started (nearly 80% of the deaths had one
6 or more known comorbidities).³⁴ This means a survival rate of 98.45% of all people who tested
7 positive for COVID-19.

8 36. In addition, statistically, 98% of the outbreaks of COVID-19 in this county from August
9 through September were comprised of workers at construction sites, at food service and restaurant
10 facilities, in retail operations, and at a grocery store. There was one outbreak among workers at a
11 place of worship, which comprised 2% of the total, according to SCCPH.³⁵

12 37. The stated purpose of the shutdown orders is to mitigate potential risk of spread of the
13 virus.³⁶ Closing churches while allowing large scale gatherings in waiting areas of gates at airports,
14 on mass transit, and at mass protests or secular children and youth programs does not advance that
15 purpose. Nor does it advance that purpose when Governor Newsom himself does not comply with
16 his own gathering orders.³⁷

17 38. CDPH's blueprint is a four-tier partial reopening plan that closes places of worship in
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19 ³³ The County has levied fines of \$350,000 against Calvary Chapel in San Jose and \$100,000 in fines against
North Valley Baptist Church in Santa Clara. Exhibits 137 and 129 hereto, respectively, incorporated herein.

20 ³⁴ SCC Demographics of Cases and Deaths, Oct. 15, 2020. Exhibit 76 hereto incorporated herein.

21 ³⁵ *Woodfolk, Coronavirus: How Silicon Valley Cases Spread may Surprise You, The Mercury News, October 25,*
2020. Exhibit 134 hereto and incorporated herein.

22 ³⁶ Exh. 57, ¶ 1; exh. 58, ¶ 2; exh. 59, ¶ 2; exh. 60, ¶ 2; exh. 61, ¶ 1b.

23 ³⁷ Bollag, *Gavin Newsom Apologizes for Attending French Laundry Party: "I Made a Bad Mistake,"* The
24 Sacramento Bee, November 16, 2020. Exhibit 139-1 hereto incorporated herein. Melugin and Insheiwat, *FOX 11*
Obtains Exclusive Photos of Gov. Newsom at French Restaurant Allegedly not Following COVID-19 Protocols, FOX
11 Los Angeles, November 19, 2020. Exhibit 139-2 hereto incorporated herein.

counties in the highest risk tier (purple). The blueprint allows religious gatherings to be held outdoors, limited to numbers that allow “strict physical distancing,” in all four tiers (purple, red, orange, and yellow) and indoors in restricted capacities in three tiers (red, orange, and yellow).³⁸

There is no plan to reopen churches indoors at more than 50% maximum capacity (yellow tier).³⁹

39. SCCPH orders are typically stricter than and not in alignment with the Blueprint with respect to religious gatherings while SCCPH exempts gatherings at airports, on mass transit, and for childcare and youth education.

40. From March 17, 2020 to October 13, 2020, SCCPH closed all places of worship in the county.⁴⁰ It prohibited even outdoor religious services until May 22, 2020. At that point, it prohibited all but 25 people from gathering outdoors.⁴¹ As of July 17, 2020, it allowed 60 people outdoors.⁴² Beginning on October 13, 2020, when SCC moved briefly into the “Moderate Risk” (orange tier), SCCPH allowed partial indoor worship with severe restrictions.⁴³ That ceased, however, on November 16, 2020.⁴⁴

41. For the brief period of time indoor worship was allowed, the restrictions kept places of worship closed to virtually all of the members of larger congregations such as plaintiff GCC. For

³⁸ *COVID-19 INDUSTRY GUIDANCE: Places of Worship and Providers of Religious Services and Cultural Ceremonies*, July 29, 2020. Exh. 32. Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.

A county’s tier status is reassessed every three weeks. The blueprint provides for a county to revert to a more restrictive tier if risk metrics worsen or move to a less restrictive tier if metrics improve. The blueprint also vests discretion in local health officers to impose stricter rules in all tiers. The stricter of the blueprint or local health order applies. This means places of worship may be closed in one county that are open in another county with the same metrics.

³⁹ Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.

⁴⁰ County Health Officer Order, March 16, 2020. Exh. 57.

⁴¹ County Health Officer Order, May 18, 2020. Exh. 60.

⁴² County Health Officer Order., July 2, 2020. Exh. 61.

⁴³ County Health Officer Order., October 5, 2020. Exh. 62. *See also* Appendix A.

⁴⁴ *Mandatory Directive: Gatherings*, July 14 (revised November 16, 2020), Exh. 70-3; *Mandatory Directive: Capacity Limitations*, November 15, 2020 (revised November 16, 2020). Exh. 70-2.

example, even a church with 2,000 congregants was limited to a maximum gathering of 100 people – a mere 5%. The remaining 1,900 congregants, who have an equal constitutional right to assemble and practice their religion, were unable to attend religious gatherings. Even if a church like plaintiff GCC had held Sunday services all day long on the Lord’s day, which would have been a challenge to accomplish, it could not possibly have accommodated its entire congregation.

42. Now the inhospitable months of fall and winter have arrived. Outdoor worship is not an option for plaintiffs, whose congregations include all ages from infants to the elderly. There is literally no way for them to assemble and practice their religion.

43. Even when CDPH allows indoor worship (red, orange, and yellow tiers), it prohibits indoor gatherings of children and youth, treating them differently than children participating in secular children and youth programs. In addition, unlike secular activities, CDPH does not allow food or beverages at indoor services. Strict six foot distancing is required outdoors. CDPH’s *COVID-19 INDUSTRY GUIDANCE: Places of Worship and Providers of Religious Services and Cultural Ceremonies* states in pertinent part:

Children should remain in the care of those in their household unit and not interact with children of other parties at any time while visiting facilities. Close play areas and discontinue activities and services for children where physical distancing of at least six feet cannot be maintained.⁴⁵

CDPH thereby prohibits churches from providing children and youth programs such as Catechism, Sunday School, Vacation Bible School, Children’s Church, Preschool, Childcare, Youth Groups, Youth Camps, religious education, or other programs and activities in places of worship.

44. CDPH gives more favorable treatment to secular children and youth education, programs,

⁴⁵ Exh. 32.

1 and activities. Even in counties in the purple tier, it allows secular schools to remain open.⁴⁶ In
 2 addition, except in counties that are subject to the Regional Stay At Home Order,⁴⁷ the state allows
 3 secular day camps to remain open,⁴⁸ secular youth cohort groups to remain open,⁴⁹ and secular
 4 providers of children and youth “in person programs, lessons, activities, and/or entertainment
 5 primarily for minors under the age of 18” (“Youth Programs”) to open. Contrary to worship
 6 services, at which children “should remain in the care of those in their household unit,”⁵⁰ “[p]arent
 7 participation is not allowed” and parents are encouraged to “dropoff or pickup” at the entrance of
 8 the Program’s facility for secular programs. In addition, for secular Youth Activities, there is no
 9 rigid social distance requirement and youth and children daily eat food and beverages indoors.⁵¹

10 45. Newsom’s stated reason for closure of all churches was his assessment of risk and reward
 11 and his “fear,” “anxiety,” and “concern” over “congregations of people mixing from far and wide,
 12 coming together, proximate in an enclosed space at large scales.”⁵² (“Gathering Activities”).

13 46. Yet, Newsom, CDPH, and SCCPH exempt Gathering Activities in airports and mass transit
 14 where large scales of people congregate all day and night, mixing from far and wide from all over
 15

16 ⁴⁶ CDPH *COVID-19 INDUSTRY GUIDANCE: Schools and School-Based Programs*, August 3, 2020, exhibit 34
 17 hereto incorporated herein, CDPH *COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in*
California, 2020-2021 School Year, July 17, 2020, p. 2. Exh. 31.

18 ⁴⁷ Exhibit 144 attached hereto incorporated herein.

19 ⁴⁸ CDPH *INTERIM GUIDANCE: Day Camps*, July 29, 2020. Exhibit 33 hereto incorporated herein.

20 ⁴⁹ CDPH *Guidance Related to Cohorts*, September 4, 2020. Exhibit 35 hereto incorporated herein.

21 ⁵⁰ *COVID-19 INDUSTRY GUIDANCE: Places of Worship and Providers of Religious Services and Cultural*
Ceremonies, July 29, 2020. Exh. 32.

22 ⁵¹ See Appendix A.

23 ⁵² In a press conference on May 7, 2020, the following question and answer with the governor:
 24 “Thank you, Governor. Can you clarify why churches . . . are in phase three and not phase two? [50:42] We’re
 looking at . . . low risk, high reward, low risk, low reward, looking at a series of conditions and criteria . . .”
 [50:59] Our fear is simply this, congregations of people mixing from far and wide, coming together, proximate
 in an enclosed space at large scales is a point of obvious concern and anxiety. [53:07]. Exhibit 18 hereto
 incorporated herein,

1 the world, coming together in close proximity for extended periods in an enclosed space.

2 47. Religious gatherings are lower risk. They occur a handful of times a week for a limited
3 period with a known congregation who reside in the same county. Members of congregations hold
4 their pastors and elders in high regard and will follow their lead with respect to mitigation measures.
5 Churches have volunteers, deacons, ushers, greeters, security, and staff to explain and monitor
6 orderly and responsible assembly.

7 48. Religious gatherings are high reward because, as recognized by both the state and the
8 county, they are vital to the health and well-being of people's minds and souls, and that is
9 particularly important in a time such as this when the pandemic and shutdown orders are threatening
10 the mental health and well-being of millions, including communities of faith.⁵³

11 49. There is an important benefit to religious gatherings that are vital to the health of the souls of
12 the nearly 20 million Californians to whom religion is "very important."⁵⁴ Reopening churches will
13 allow their leaders to restore the failing health of the souls and spirits of the men, women, youth,
14 and children in their congregations. The harm to the health of individuals who have been denied
15 entrance into the house of God is at least as compelling a public health interest as is mitigating
16 potential exposure to a virus, particularly when simple personal conduct can protect people from the
17 virus, and particularly given there is only one incident of historical spread in a place of worship in
18 this county.⁵⁵

19 50. There is no plan or set of metrics to reopen churches to full capacity. The state has a partial

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21 ⁵³ Stokols, Newsom Promises Reopening Plan for Churches as Trump Demands Immediate Action, Los Angeles
22 Times, May 22, 2020 ("[w]e have been very aggressive in trying to put together guidelines that will do justice to
people's . . . fundamental need and desire to practice their faith"), exhibit 102 hereto and incorporated herein; County
Health Officer Order, May 18, 2020, App. C-2, ¶ (5) ("religious gatherings . . . are vital to people's social and spiritual
well being"). Exh. 60.

23 ⁵⁴ Pew Research Center, Religious Landscape Study, February 29, 2015. Exh. 92.

24 ⁵⁵ *Woodfolk, Coronavirus: How Silicon Valley Cases Spread may Surprise You, The Mercury News, October 25,*
25 *2020.* Exh. 134.

1 reopening plan that at best opens churches to a maximum of 50% facility capacity in the least
 2 restrictive minimal risk, yellow tier.⁵⁶ Historically, SCCPH has been more restrictive than the state
 3 with respect to places of worship.⁵⁷

4 51. Urgent relief is needed because defendants have prohibited and restricted congregations
 5 from gathering in places of worship for nine months through a web of orders not narrowly tailored
 6 to advance the stated interest of limiting spread of the virus.

7 52. Plaintiffs have no adequate remedy at law.

8 THE FACTS

9 Plaintiffs' Beliefs, Worship and Religious Practices

10 53. Plaintiffs are Christian churches who are bodies of believers (congregations) who assemble
 11 in the sanctuary of their churches to worship the Lord under the spiritual oversight of pastors and
 12 elders. The shutdown order is causing immense harm to the minds and souls of people of faith for
 13 whom it is a way of life to worship with other believers.

14 54. Plaintiffs believe the Holy Bible (Judeo-Christian text) is the inspired word of God and sets
 15 forth the rules of their faith and religious practice.⁵⁸

16 55. God created men and women in his own image⁵⁹ with a soul and body.⁶⁰ The soul is the
 17 heart and emotions and mind of men and women. The soul is what makes people human. The health

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 20 ⁵⁶ *COVID-19 INDUSTRY GUIDANCE: Places of Worship, etc.*, July 29, 2020. Exh. 32. Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.

21 ⁵⁷ *Mandatory Directive: Gatherings*, July 14 (revised November 4, 2020). Exh. 69.

22 ⁵⁸ "All scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for instruction in righteousness:" Timothy 3:16.

23 ⁵⁹ "So God created mankind in his own image, in the image of God he created them." Genesis 1:27 NIV

24 ⁶⁰ "May God himself, the God of peace, sanctify you through and through. May your whole spirit, soul and body be kept blameless at the coming of our Lord Jesus Christ." 1 Thessalonians 5:23 NIV.

1 of the soul is essential to the health of the body.⁶¹

2 56. The psalmist described the intense desire of God's people to dwell in the house of the Lord
3 all their life:

4 One thing have I desired of the LORD, that will I seek after; that I may dwell in the
5 house of the LORD all the days of my life, to behold the beauty of the LORD, and to
enquire in his temple. Psalm 27:4. KJV

6 The psalmist describes this desire: "My soul longs, yes, faints for the courts of the LORD; my heart
7 and flesh sing for joy to the living God." Psalm 84:2 "For a day in your courts is better than a
8 thousand elsewhere. I would rather be a doorkeeper in the house of my God than dwell in the tents
9 of wickedness." Psalm 84:10. God's people enter his house with thanksgiving and come into his
10 presence with singing and praise and worship in his sanctuary.⁶²

11 57. This hunger of the soul to draw closer to God is a longing only God can satisfy.⁶³ It is the
12 soul that loves the Lord with all a person's mind and heart.⁶⁴ It is the soul that blesses the Lord.⁶⁵ It

15 ⁶¹ "Beloved, I pray that all may go well with you and that you may be in good health, as it goes well with your
16 soul." 3 John 1:2 ESV

17 ⁶² "Serve the Lord with gladness: come before his presence with singing. Know ye that the Lord he is God: it is
18 he that hath made us, and not we ourselves; we are his people, and the sheep of his pasture. Enter into his gates with
19 thanksgiving, and into his courts with praise: be thankful unto him, and bless his name." (Psalm 100:2-4 KJV) O come,
20 let us worship and bow down: let us kneel before the LORD our maker. "Praise ye the LORD. (Psalms 95:6 KJV) Praise
21 God in his sanctuary: praise him in the firmament of his power." (Psalm 150:1 KJV) "Saying, I will declare thy name
unto my brethren, in the midst of the church will I sing praise unto thee." (Hebrews 2:12 KJV) "Praise ye the LORD.
Sing unto the LORD a new song, and his praise in the congregation of saints." (Psalm 149:1 KJV) "Shout for joy to the
LORD, all the earth. Worship the LORD with gladness; come before him with joyful songs. Know that the LORD is
God. It is he who made us, and we are his; we are his people, the sheep of his pasture. Enter his gates with thanksgiving
and his courts with praise; give thanks to him and praise his name." (Psalm 100:1-5) "All the nations you have made
will come and worship before you, Lord; they will bring glory to your name. For you are great and do marvelous deeds;
you alone are God." Psalm 86:9-10.

22 ⁶³ "For he satisfies the longing soul, and the hungry soul he fills with good things." Psalm 107:9.

23 ⁶⁴ "You shall love the Lord your God with all your heart and with all your soul and with all your might."
Deuteronomy 6:5. "Jesus replied: 'Love the Lord your God with all your heart and with all your soul and with all your
mind.'" Matthew 22:7.

24 ⁶⁵ "Bless the Lord, O my soul, and all that is within me, bless his holy name!" Psalm 103:1.

1 is the soul that magnifies the Lord.⁶⁶ The health of the soul is the most valuable thing on earth.⁶⁷

2 58. The ancient covenant of worship between God and His people is a divine promise to deliver
3 worshippers from their enemies.⁶⁸ God covenants to heal their disease, renew worshippers' strength,
4 redeem their fallen lives, forgive their iniquities and crown worshippers with steadfast love and
5 mercy.⁶⁹

6 59. The covenant of worship is carried out with reverence and awe of the power and might of a
7 God whose kingdom cannot be shaken.⁷⁰ The last enemy God promises to destroy is death.⁷¹ Death
8 is overcome by the promise of eternal life for those who believe in the son of God, Jesus Christ.⁷²
9 By faith in Jesus, believers become the children of God.⁷³ A covenant of worship cannot be
10 broken.⁷⁴

12 ⁶⁶ "And Mary said, "My soul magnifies the Lord," Luke 1:46 ESV.

13 ⁶⁷ "What good will it be for someone to gain the whole world, yet forfeit their soul? Or what can anyone give in
14 exchange for their soul?" Matthew 16:26.

15 ⁶⁸ "Do not forget the covenant I have made with you, and do not worship other gods. Rather, worship the LORD
your God; it is he who will deliver you from the hand of all your enemies." 2 Kings 17:38-39.

16 "... Yet a time is coming and has now come when the true worshipers will worship the Father in the Spirit and in truth,
for they are the kind of worshipers the Father seeks. God is spirit, and his worshipers must worship in the Spirit and in
truth." John 4:21-24.

17 ⁶⁹ "Of David. Bless the Lord, O my soul, and all that is within me, bless his holy name! Bless the Lord,
18 O my soul, and forget not all his benefits, who forgives all your iniquity, who heals all your diseases, who
redeems your life from the pit, who crowns you with steadfast love and mercy, who satisfies you with good so
that your youth is renewed like the eagle's." Psalm 103:1-22 ESV.

19 ⁷⁰ "Therefore, since we are receiving a kingdom that cannot be shaken, let us be thankful, and so worship God
20 acceptably with reverence and awe, for our "God is a consuming fire." Hebrews 12:28-29.

21 ⁷¹ "The last enemy to be destroyed is death." 1 Corinthians 15:26 ESV.

22 ⁷² "For God so loved the world, that he gave his only Son, that whoever believes in him should not perish but
have eternal life." John 3:16 ESV. "For the wages of sin is death, but the free gift of God is eternal life in Christ Jesus
our Lord." Romans 6:23 ESV. "And this is eternal life, that they know you the only true God, and Jesus Christ whom
23 you have sent." John 17:3 ESV.

24 ⁷³ "For ye are all the children of God by faith in Christ Jesus." Galatians 3:26.

25 ⁷⁴ "If a man vows a vow to the Lord, or swears an oath to bind himself by a pledge, he shall not break his word.
He shall do according to all that proceeds out of his mouth." Numbers 30:1-2.

60. Regular assembly in the house of the Lord is a biblical precept and duty of the church.⁷⁵ Gathering is essential to the nature of the church: “when you come together as a church” (1 Cor. 11:18). Assembly is not an option. It is one of the ten commandments to keep the Lord’s day holy.⁷⁶ The congregational assembly is on Sundays for Plaintiffs’ churches. Assembly involves religious leaders and believers personally gathering in the temple.⁷⁷ The assembly includes all men, women, children, and visitors.⁷⁸

61. Congregational worship is an expression based participatory gatherings in which people actively “come before his presence with singing” and “enter into his gates with thanksgiving,” worshipping the Lord together, in songs of praise, songs of thanksgiving, songs of joy, new songs, and songs in the Spirit (collectively “worship”).⁷⁹

⁷⁵ “Not forsaking the assembling of ourselves together, as the manner of some is; but exhorting one another: and so much the more, as ye see the day approaching. For if we sin willfully after that we have received the knowledge of the truth, there remaineth no more sacrifice for sins.” Hebrews 10:25-26 KJV.

⁷⁶ “Remember the Sabbath day, to keep it holy.... The seventh day is a Sabbath to the Lord our God ... For in six days the Lord made heaven and earth, the sea, and all that is in them, and rested on the seventh day. Therefore the Lord blessed the Sabbath day and made it holy.” Exodus 20:8-11.

⁷⁷ “And day by day, attending the temple together...” Luke 22:53: “While I was with you daily in the temple ...” Acts 2:46.

⁷⁸ “Assemble the people, the men and the women and children and the alien who is in your town, so that they may hear and learn and fear the Lord your God, and be careful to observe all the words of this law.” Deuteronomy 31:12-13.

⁷⁹ “Speaking to one another with psalms, hymns, and songs from the Spirit. Sing and make music from your heart to the Lord” Ephesians 5:19. “Let the message of Christ dwell among you richly as you teach and admonish one another with all wisdom through psalms, hymns, and songs from the Spirit, singing to God with gratitude in your hearts” Colossians 3:16. “About midnight Paul and Silas were praying and singing hymns to God, and the other prisoners were listening to them” Acts 16:25. “Sing to the Lord a new song, his praise from the ends of the earth, you who go down to the sea, and all that is in it, you islands, and all who live in them.” Isaiah 42:10. “Is anyone among you in trouble? Let them pray. Is anyone happy? Let them sing songs of praise.” James 5:13. “Come, let us sing for joy to the LORD; let us shout aloud to the Rock of our salvation.” Psalm 95:1. “When they had sung a hymn, they went out to the Mount of Olives.” Matthew 26:30. “Those who were musicians, heads of Levite families, stayed in the rooms of the temple and were exempt from other duties because they were responsible for the work day and night.” 1 Chronicles 9:33. “And you will sing as on the night you celebrate a holy festival; your hearts will rejoice as when people playing pipes go up to the mountain of the LORD, to the Rock of Israel.” Isaiah 30:29. “Then I was given a measuring rod like a staff, and I was told, “Rise and measure the temple of God and the altar and those who worship there, but do not measure the court outside the temple.” Revelations 11:1.

62. In the assembly in God's house, God's people gather to worship, speak, inquire, teach, and hear the word of God together,⁸⁰ and partake of the sacraments together of holy communion, the Lord's Supper,⁸¹ and in the assembly new disciples are baptized and added to the church and taught to obey the Lord's commandments;⁸² people assemble for fellowship and breaking bread⁸³ and for prayer, anointing and healing of the sick,⁸⁴ and to pray the Lord's prayer for God's will to be done on earth as it is heaven⁸⁵ and for salvation of souls that they may have eternal life through Jesus, the son of God (collectively "faith practices").

⁸⁰ "And Jesus began to say, as He taught in the temple, "How is it that the scribes say that the Christ is the son of David?" Mark 12:35. "Then, after three days they found Him in the temple, sitting in the midst of the teachers, both listening to them and asking them questions." Luke 2:46. "Early in the morning He came again into the temple, and all the people were coming to Him; and He sat down and began to teach them." John 8:42. "Then Jesus cried out in the temple, teaching and saying, 'You both know Me and know where I am from; and I have not come of Myself, but He who sent Me is true, whom you do not know'." John 7:28. "These words He spoke in the treasury, as He taught in the temple." John 8:20. "Jesus answered him, 'I have spoken openly to the world; I always taught in synagogues and in the temple, where all the Jews come together; and I spoke nothing in secret'." John 18:20. "But when it was now the midst of the feast Jesus went up into the temple and began to teach." John 7:14.

⁸¹ "They worshiped together at the Temple each day, met in homes for the Lord's Supper, and shared their meals with great joy and generosity. Acts 2:26. "When you come together, it is not the Lord's supper that you eat." 1 Corinthians 11:26. The Lord Jesus, on the night he was betrayed, took bread, and when he had given thanks, he broke it and said, "This is my body, which is for you; do this in remembrance of me." ... "This cup is the new covenant in my blood; do this, whenever you drink it, in remembrance of me." 1 Corinthians 11:23-27.

⁸² "Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you. And surely I am with you always, to the very end of the age." Matthew 28:19-20, known as the great commission. "Those who accepted his message were baptized, and about three thousand were added to their number that day." Acts 2:41. "But when they believed Philip as he proclaimed the good news of the kingdom of God and the name of Jesus Christ, they were baptized, both men and women." Acts 8:12.

⁸³ "On the first day of the week, when we were gathering together to break bread, Paul talked with them ... he prolonged his speech until midnight." Acts 20:7. "They devoted themselves to the apostles' teaching and to fellowship, to the breaking of bread and to prayer... All the believers were together ... They broke bread in their homes and ate together with glad and sincere hearts." Acts 2:42-46.

⁸⁴ "And the blind and the lame came to Him in the temple, and He healed them." Matthew 21:14 "Is anyone among you sick? Let him call for the elders of the church, and let them pray over him, anointing him with oil in the name of the Lord." James 5:14 "There was a man who was born lame. He was being carried to the gate of the temple ... Peter said, 'I don't have any silver or gold, but I do have something to give you: in the name of Jesus Christ of Nazareth, rise up and walk! ... He leaped up, stood, and began to walk. He went with Peter and John into the temple. He was walking, leaping, and praising God.'" Acts 3:2-8.

⁸⁵ "Pray then like this: "Our Father in heaven, hallowed be your name. Your kingdom come, your will be done, on earth as it is in heaven. Give us this day our daily bread, and forgive us our debts, as we also have forgiven our debtors. And lead us not into temptation, but deliver us from evil." Matthew 6:9-13.

63. Religious gatherings and worship and faith practices in places of worship are vital to the souls and health of communities of faith. There is healing for all God's people when they gather in the presence of the Lord. Luke 4:40. Luke 6:19.

The State has Banned Religious Practices and Dictated Alternative Religious Practices

64. The state has banned worship and dictated new "alternative" religious practices and "services" as follows:

Discontinue singing (in rehearsals, services, etc.), chanting, and other practices and performances ... Consider practicing these activities through alternative methods (such as internet streaming) that ensure individual congregation members perform these activities separately in their own homes... Places of worship should continue to provide services through alternative methods (such as via internet live and/or recorded streaming, telephone, drive-in, etc.) ... Consider modifying practices that are specific to particular faith traditions ... Examples are discontinuing kissing of ritual objects, allowing rites to be performed by fewer people, avoiding the use of a common cup, offering communion in the hand instead of on the tongue ...⁸⁶

65. The ban on religious assembly and worship violates the laws and commandment of God and the covenant of worship. The ban abolishes constitutional rights that protect essential religious practices of plaintiffs that go to the very heart and core of their religion.

66. CDC does not recommend banning singing. Science shows singing can be safe with mitigation measures.⁸⁷

67. The state-dictated alternative of non-congregational "services" via video streaming in cyberspace is not a substitute for congregational worship. Worship services are not an individual sitting alone in a room by himself viewing video clips of a pastor speaking to empty seats and a masked worship team singing with no one to lead. Members of churches are worshippers, not

⁸⁶ CDPH *INDUSTRY GUIDANCE: Places of Worship, etc.*, July 29, 2020. Exh. 32. See also exh. 28 ("essential workforce" includes "[c]lergy for essential support and faith-based services that are provided through streaming or other technologies").

⁸⁷ Centers for Disease Control and Prevention, *Considerations for Communities of Faith*, October 29, 2020. Exh. 6. Alsved, Matamis, Bohlin, *et al.*, *Exhaled Respiratory Particles During Singing and Talking*, *Aerosol Science and Technology*, September 17, 2020. Exh. 94.

1 spectators. Pastors of churches are shepherds of people, not talking heads on screens. Worship
2 teams are song and praise leaders, not entertainers.

3 68. The state ban on assembly and worship is anathema to faith communities. The county's
4 dictation of alternative religious practices has created a people-less, soul-less, non-biblical
5 alternative to congregational worship services that is repugnant to the federal constitution.

6 Disparate Treatment of High-Risk Secular Gatherings in Airports and Mass Transit

7 69. The governor, CDPH, and SCCPH have allowed airports and mass transit to remain wide
8 open during the pandemic with no or few prohibitions or restrictions on travel.⁸⁸

9 70. On March 11, 2020, in a Public Health Department press release, Cody recognized the risks
10 and dangers that airports presented in terms of disease transmission, but she nonetheless did not
11 recommend their closure:

12 As many public health officials have noted, airports present an elevated risk of
13 exposure to COVID-19 given the number of people passing through from different
14 locations. The risk is likely greater for airport workers, who spend long periods of
15 time in that environment. [T]he Public Health Department is not currently
16 recommending closure of the airport given the significant societal harms lack of
17 access to travel would cause.⁸⁹

16 ⁸⁸ In Newsom's Executive Order N-33-20, he ordered all residents "immediately [to] heed the current State
17 public health directives," and adopted the Order of the State Public Health Officer dated March 19, 2020, requiring all
18 individuals living in the State of California to stay home except as needed to maintain continuity of operations of the
19 federal critical infrastructure sectors. As stated in the order, the federal critical infrastructure sectors are identified at
20 <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. The sectors include the Transportation
21 Systems Sector, defined in part as:

19 Aviation includes aircraft, air traffic control systems, and about 19,700 airports, heliports, and landing
20 strips. Approximately 500 provide commercial aviation services at civil and joint-use military
21 airports, heliports, and sea plane bases. . . .

* * * * *

21 Mass Transit and Passenger Rail includes terminals, operational systems, and supporting
22 infrastructure for passenger services by transit buses, trolleybuses, monorail, heavy rail—also known
23 as subways or metros—light rail, passenger rail, and vanpool/rideshare. Public transportation and
24 passenger rail operations provided an estimated 10.8 billion passenger trips in 2014.

23 Cybersecurity & Infrastructure Security Agency: Essential Critical Infrastructure Workers, Transportation Systems
24 Sector Overview. Exhibits 1 and 2 hereto incorporated herein. *See also* Appendix A.

24 ⁸⁹ Press Release Issued by Santa Clara County Public Health regarding COVID-19 and Airports. Exhibit 74
25 hereto incorporated herein.

1 71. In March 2020, near the beginning of the pandemic, five Transportation Security
 2 Administration (TSA) officers at SJC tested positive for COVID-19. This resulted in the quarantine
 3 of 14 employees of TSA at SJC.⁹⁰ Over two thousand TSA employees across the nation have tested
 4 positive for COVID-19.⁹¹ The top TSA official in Kansas characterized TSA personnel as “Typhoid
 5 Marys [who] contributed to the spread of th[e] virus.”⁹²

6 72. On May 15, 2020, the Centers for Disease Control and Prevention published the results of a
 7 study of international travelers in California and concluded that “[d]espite intensive effort, the
 8 traveler screening system did not effectively prevent introduction of COVID-19 into California.”
 9 The recommendation: “Health departments need to weigh the resources needed for monitoring
 10 against those needed for implementing mitigation activities during the COVID-19 pandemic.”⁹³

11 73. The state’s *COVID-19 INDUSTRY GUIDANCE: Public and Private Passenger Carriers,*
 12 *Transit, and Intercity Passenger Rail*, October 20, 2020, has a distancing requirement that is not
 13 evenly enforced and includes no maximum number of passengers.⁹⁴ It states:

14 Reduce maximum occupancy onboard transit and rail vehicles and vessels to support
 15 physical distancing. Remove or space seats to support physical distancing or use
 16 colored tape to mark the seats that riders are allowed to use or block off seats that are
 17 not to be used. Where possible, use additional buses or transit vehicles to support
 18 excess capacity on busy lines and ensure physical distancing of passengers.

19
 20 ⁹⁰ TSA Statement on Fifth COVID-19 Case at SJC Airport. Exhibit 9 hereto incorporated herein.

21 ⁹¹ TSA, *Coronavirus (COVID-19) Information, TSA Response to COVID-19*. Exhibit 10 hereto incorporated
 22 herein.

23 ⁹² Associated Press, *TSA Official Says the Agency Helped Spread Coronavirus*, June 20, 2020. Exhibit 122
 24 hereto incorporated herein.

25 ⁹³ Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR)*, May 15, 2020.
 Exhibit 4 hereto incorporated herein.

⁹⁴ Exhibit 38 hereto incorporated herein.

74. Defendants impose no maximum capacity restrictions on SJC or Bay Area Rapid Transit (BART) that extends into this county. BART is not removing seats and finds it too difficult to monitor physical distancing but encourages three to six feet of distancing for its estimated 500,000 passengers per week (estimated 26,000,000 per year).⁹⁵

75. In Cody's *Mandatory Directive: Capacity Limitations*, November 15, 2020 (revised December 4, 2020), she mandates that gatherings – movie showings, political events, weddings, funerals, and, specifically, worship services -- are “[p]rohibited” indoors.⁹⁶ She does not, however, apply that prohibition to airports or other transit facilities. In her *Mandatory Directive on Travel*, November 28, 2020 (revised December 2, 2020), Cody states that she “discourages travel, especially for non-essential purposes” (emphasis added), but she does not prohibit it.⁹⁷ Likewise, in her *Mandatory Directive: Public Transit*, July 10, 2020 (revised November 16, 2020), Cody does not prohibit the use of transit but orders, in pertinent part, as follows:

While using public transit, passengers must, to the maximum extent feasible, maintain social distancing of at least 6 feet from everyone who is not in their household.⁹⁸

76. During the pandemic, travelers from all over the world have congregated at SJC departure gates, amounting to 700,000 people.⁹⁹ At SJC, travelers gather all day and all night in the seating areas and aisles of 30 terminal gates, as well as standing in close proximity for extended periods at gates, in baggage areas, on security lines, at check-in areas, on escalators, in elevators, at dining areas, and in concession stands. At a single British Airways gate, depending on the plane in use, one

⁹⁵ San Jose International Airport, *Novel Coronavirus (COVID-19) Information*., exhibit 152 hereto incorporated herein; Bay Area Rapid Transit Press Release, *BART Releases 15-Step Plan to Welcome Back Riders as Region Opens*, July 31, 2020. Exhibit 48 hereto incorporated herein.

⁹⁶ Exh. 159.

⁹⁷ Exh. 70-2149, attached hereto incorporated herein.

⁹⁸ Exhibit 150, attached hereto incorporated herein.

⁹⁹ Mineta San Jose International Airport, Monthly Activity Reports. Exhs. 85, 153.

1 gathering may number as many as almost 400 passengers.¹⁰⁰ And the configuration of SJC's gates
 2 in its terminals creates a convergence of multiple traveler gatherings from multiple flights and gates
 3 situated in close proximity for extended periods, increasing the combined size of traveler
 4 gatherings.¹⁰¹

5 77. TSA recommends travelers arrive at SJC two hours prior to scheduled departure for
 6 domestic flights and three hours ahead of time for international flights.¹⁰² Southwest Airlines, a
 7 popular airline at SJC, has a "Minimum Check-in Time" of 60 to 90 minutes.¹⁰³ SJC allows
 8 travelers to congregate overnight in terminal gates to wait for their flights.¹⁰⁴

9 78. The duration during which travelers congregate prior to flight is similar to the length of a
 10 church service. That notwithstanding, the state and SCCPH do not restrict the number of travelers
 11 gathering at SJC yet they severely restrict the maximum capacity at places of worship when they
 12 even allow indoor gathering at all.

13 Gatherings Were and Are Allowed for Secular Youth Programs and Activities

14 79. Exhibit A summarizes the disparate treatment applied to religious and non-religious youth
 15 and children's programs.

16 80. On July 29, 2020, the state issued a *COVID-19 INDUSTRY GUIDANCE: Places of Worship,*
 17 *etc.* In that order, the state mandated that at places of worship, children must remain with their
 18
 19

20 ¹⁰⁰ Meacham, *British Airways Will Use Bigger Plane for its San Jose Nonstops*, The Business Journal, December
 21 9, 2019. Exhibit 99 hereto incorporated herein.

22 ¹⁰¹ Diagrams of SJC terminals. Exhibit 86 hereto incorporated herein.

23 ¹⁰² San Jose International, Security Checkpoints. Exhibit 87 hereto incorporated herein.

24 ¹⁰³ San Jose International, Southwest. Exhibit 88 hereto incorporated herein.

25 ¹⁰⁴ Norman Y. Mineta San Jose International Airport Operations Division Policy Manual, Terminal Management
 – Overnight Lodging. Exhibit 89 hereto incorporated herein.

1 parents.¹⁰⁵ The order states, in relevant part:

2 Children should remain in the care of those in their household unit and not interact
3 with children of other parties at any time while visiting facilities.

4 As a result of that order, even when indoor activities are allowed, places of worship may not offer
5 Sunday School or any other of the myriad programs and activities they offered to youth in their
6 congregations prior to the advent of the COVID-19 pandemic.

7 81. On August 3, 2020, the state issued its *COVID-19 INDUSTRY GUIDANCE: Schools and*
8 *School-Based Programs*.¹⁰⁶ Once a county leaves Tier 1 under the Blueprint, “all schools can
9 resume full in person instruction.” And schools that were allowed to open in counties that are put
10 back in the purple tier may remain open.¹⁰⁷ Further, there is a provision for elementary schools in a
11 county in Tier 1 to seek a waiver of the provision prohibiting in-person learning.¹⁰⁸ In other words,
12 the state has allowed secular organizations to provide an unlimited variety of programs and
13 activities for youth, so long as they follow the directives in the Guidance. The same is not true for a
14 religious organization.

15 82. On September 21, 2020, SCCPH issued its *COVID-19 Prepared: Reopening of Santa Clara*
16 *County K-12 Schools*.¹⁰⁹ Under that order, schools in the county were able to open to in-person
17 learning so long as they follow the rules regarding face masks and distancing. There was no
18 limitation on the number of people who can gather. The same is not true for religious organizations.

19 ¹⁰⁵ Exh. 32.

20 ¹⁰⁶ Exh. 34.

21 ¹⁰⁷ CDPH *COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021*
22 *School Year*, July 17, 2020. Exhibit 31 hereto incorporated herein.

23 ¹⁰⁸ In addition, the state provides for elementary schools in counties in the purple tier to obtain a waiver to open
24 for in-person learning. CDPH *COVID-19 and Reopening In-Person Learning Elementary Education Waiver Process*,
25 August 3, 2020. Exhibit 47 hereto incorporated herein.

¹⁰⁹ Exhibit 66 hereto incorporated herein.

83. On November 16, 2020, SCCPH issued its *Mandatory Directive: Programs Serving Children or Youth*, which applied to childcare programs, preschools, summer schools, afterschool programs, academic enrichment centers, programs providing oversight and support for children and/or youth engaging in distance/remote or independent learning, dance classes, music lessons, organized recreational and athletic activities for children and youth, camps, lessons, practices, competitions, etc.¹¹⁰ Children up to age five were allowed gather in groups up to as many as 24 individuals, not including supervisory personnel. Children/youth aged six years and older could gather in groups up to as many as 16 individuals. There was no limitation on the number of such groups that could congregate in any one facility. None of this is true for religious organizations.

84. SCCPH issued its *Mandatory Directive: Capacity Limitations*, November 15, 2020 (revised December 4, 2020), that applies to places of worship.¹¹¹ Under that order, gatherings are currently prohibited in their entirety indoors for churches.

Selective Enforcement: Mass Protests

85. With her May 18, 2020, order, Cody forbade protest gatherings (“individuals may leave their residence only to perform the following “Essential Activities” . . .).¹¹² In her *Mandatory Directive: Gatherings*, July 13, 2020, she specifically defined “gatherings” to include protests, and limited them to 60 people with a requirement that all attendees wear a face mask.¹¹³ Despite those

¹¹⁰ Exhibit 70-4 incorporated herein.

¹¹¹ *Mandatory Directives: Capacity Limitations*, November 15, 2020, as revised November 16, 2020. Exh. 70-2.

¹¹² County Health Officer Order, May 18, 2020. Exh. 60.

¹¹³ The *Mandatory Directive: Gatherings*, July 13, 2020, as updated September 5, 2020, provides, in pertinent part, as follows:

A “gathering” is an event, assembly, meeting, or convening that brings together multiple people from separate households in a single space, indoors or outdoors, at the same time and in a coordinated fashion—like a wedding, banquet, conference, religious service, festival, fair, party, performance, barbecue, **protest**, or picnic.

* * * * *

Everyone must wear a face covering at all times during a gathering.

1 prohibitions and that requirement, she expressly blessed the racial injustice protests that followed
 2 the death of George Floyd and Jacob Blake (and others) – even though the gatherings far exceeded
 3 60 individuals and included many who went without face masks.¹¹⁴

4 86. On May 29, 2020, as many as 1,000 protesters demonstrated in Silicon Valley, some of
 5 whom went so far as to block traffic on Highway 101 and perpetrate violence. There were 327 San
 6 Jose police officers assigned to the protest, along with 13 outside agencies and 91 outside agency
 7 personnel. Officials say 38 people were arrested.”¹¹⁵ In addition to risking contagion from the
 8 crowd, protesters who were detained or arrested were also exposed to a number of police officers
 9 who did not wear face masks.¹¹⁶

10 87. On June 5, 2020, a demonstration on the steps of Santa Clara City Hall brought together
 11
 12

13 Exhibit 63 hereto incorporated herein (emphasis added), pp. 3-5.

14 ¹¹⁴ SCCPH issued a press release on June 1, 2020, in which it stated, in part:

15 The County of Santa Clara Public Health Department recognizes that peaceful protest in response to
 16 the pain, anger and mourning due to deeply rooted inequities and systemic racism is a fundamental
 17 right that is critical to the health of our democracy. As residents of the county exercise this right, we
 respectfully remind everyone that our community is still facing a health crisis as COVID-19 is still
 present. We urge those engaging in peaceful protest to keep their own health and that of others in
 mind by following important practices, such as using face coverings and, to the extent possible,
 maintaining social distancing.

18 Exhibit 75 hereto incorporated herein.

19 ¹¹⁵ Lauer, *San Jose: Hundreds Protest Killing of George Floyd, Stop Traffic*, San Jose Spotlight, May 29, 2020.
 Exhibit 104 hereto and incorporated herein. Associated Press, *Hundreds Block 101 Freeway in Silicon Valley over*
 20 *Floyd Killing*, KTLA5, May 29, 2020. Exhibit 105 hereto and incorporated herein. KTVU Staff, *Death of George Floyd*
Sparks Bay Area Protests, Fox2 KTVU, May 30, 2020. Exhibit 106 hereto and incorporated herein. *George Floyd*
 21 *Death: 38 People Arrested, Several Officers Injured in Violent San Jose Protests*, ABC7News, May 30, 2020,
 Rodriguez, *38 People Arrested Following George Floyd Protest in San Jose, Officials Say*, KRON4, May 30, 2020.
 Exhibit 107 hereto and incorporated herein. *San Jose Police Declare George Floyd Protest an Unlawful Assembly, Fire*
 22 *Tear Gas into Crowd*, CBSSF Bay Area, May 30, 2020. Exhibit 109 hereto and incorporated herein. LaPlante and
 Johnson, *San Jose Imposes a Curfew, Hundreds Protest George Floyd Death for Third Day*, San Jose Spotlight, May
 31, 2020. Exhibit 110 hereto and incorporated herein. Staff Report, *Protestors Rally in Downtown Gilroy Following*
 23 *Death of George Floyd*, Gilroy Dispatch, June 1, 2020. Exhibit 111 hereto and incorporated hereto.

24 ¹¹⁶ Hase, *Health Officers Urge Protesters to Get Tested for COVID-19*, San Jose Inside, June 1, 2020. Exhibit 112
 hereto incorporated herein.

1 approximately 200 protesters without any police presence.¹¹⁷

2 88. On June 6, 2020, hundreds of protesters demonstrated in front of San Jose City Hall.¹¹⁸

3 89. On June 8, 2020, hundreds of protesters demonstrated in front of the Santa Clara County
4 Sheriff's office in Cupertino.¹¹⁹

5 90. Also on June 8, 2020, at San Jose City Hall, hundreds of protesters either took a knee or laid
6 on their backs for 8 minutes and 46 seconds, the same amount of time former Minneapolis police
7 officer Derek Chauvin kept his knee on George Floyd's neck, killing him.¹²⁰

8 91. On June 12, 2020, protesters met at Hoover Park in Cupertino, where 10 African-American
9 speakers discussed experiences with racial discrimination that they and their family members have
10 faced. Afterward, some two thousand protesters marched to the West Valley Division of the Santa
11 Clara County Sheriff's Office to demonstrate before returning to the park for an open microphone
12 where protestors shared their experiences."¹²¹

13 92. On June 25, 2020, the Santa Clara County Office of the District Attorney declined to
14 prosecute protestors for non-violent COVID-19 violations during the George Floyd protests.¹²²

15 93. On July 20, 2020, thousands of protesters gathered in the County to protest racial injustice.

17
18 ¹¹⁷ *Intimate Black Lives Matter Protest Held in Santa Clara*, SV Voice, June 8, 2020. Exhibit 117 hereto incorporated herein.

19 ¹¹⁸ West and Freimarck, *Protesters participate in peaceful Black Lives Matter 'die-in' protest hosted by local NAACP*, La Voz, June 6, 2020. Exhibit 115 hereto incorporated herein.

20 ¹¹⁹ Staff Writer, *Hundreds in Cupertino Protest Police Brutality*, Cupertino Today, June 8, 2020. Exhibit 118 hereto incorporated herein.

21 ¹²⁰ Trujano and Bartlett, *Seventh Day of George Floyd Protests in San Jose Remains Peaceful, For the Most Part*, SJSU News, June 8, 2020. Exhibit 119 hereto incorporated herein.

22 ¹²¹ Ali-Ahmad, *Nearly Two Thousand Protestors Gather in Cupertino*, Estoque, June 12, 2020. Exhibit 121 incorporated herein.

23 ¹²² Wadsworth, *DA Won't Prosecute Curfew Violators—But San Jose Might*, San Jose Inside, June 25, 2020.. Exhibit 123 hereto incorporated herein.

1 There was no enforcement of the Mandatory Directive: Gatherings against the protesters.¹²³

2 94. On August 16, 2020, community members supported a hunger strike by inmates in the Santa
3 Clara County jail system. The photograph that accompanied the article shows more than one
4 protester without a mask.¹²⁴

5 95. On August 28, 2020, approximately 100 protesters gathered at the home of Sam Liccardo,
6 mayor of San Jose, where they painted graffiti on the walls of his home. San Jose Police later
7 arrested a single individual because of a separate vandalism incident at City Hall.¹²⁵

8 96. On September 3, 2020, the City of San Jose failed to cite protesters for curfew violations
9 during protests.¹²⁶

10 97. No one in law enforcement has taken any steps to limit the size of peaceful protests or to
11 ensure protesters wear masks. In other words, the County enforces its orders selectively, levying
12 hundreds of thousands of dollars in fines against churches the congregations of which gather to
13 worship while allowing hundreds of protesters to gather without repercussion.

14 98. Thus, at the time Cody was supporting the “fundamental right” to gather in protest of racial
15 injustice, though it was a violation of her May 18, 2020, order, she had closed all places of worship
16 for indoor gathering and had limited outdoor gathering for religious purposes to 25 people.

17 The Science Behind COVID-19

18 99. The science of COVID-19 is much better understood today than it was when the disease first
19

20 ¹²³ King, *Silicon Valley Reps Demand Answers About Government Surveillance at Protests*, San Jose Spotlight,
21 July 20, 2020. Exhibit 125 hereto incorporated herein.

22 ¹²⁴ Salonga, *Rally Supports Inmates’ Hunger Strike Over Coronavirus at Santa Clara County Jails*, The Mercury
News, August 16, 2020. Exhibit 126 hereto incorporated herein.

23 ¹²⁵ Green, *Jacob Blake Shooting Sparks Protests in San Jose, Oakland*, The Mercury News, August 31, 2020.
Exhibit 127 hereto incorporated herein.

24 ¹²⁶ Wadsworth, *San Jose Quietly Drops Curfew Citations Amid Claims of Selective Enforcement*, Inside San Jose,
25 Sept 3, 2020. Exhibit 128 hereto incorporated herein.

1 arrived on our shores ten months ago. Scientists have identified the populations most at risk of
 2 serious injury and/or death from the disease, they are developing new treatments and mitigation
 3 protocols, and they are working on a vaccine. Mitigation measures such as wearing face coverings,
 4 physical distancing, disinfecting surfaces, washing hands, and using hand sanitizer have proven to
 5 be quite effective at slowing the spread of the disease and in reducing the risk of exposure.

6 100. In a peer-reviewed study of the COVID-19 infection fatality rate published by the World
 7 Health Organization (“WHO”), the researcher projected that, as of September 12, 2020, over half a
 8 billion people have been infected and most locations probably have an infection fatality rate less
 9 than .2% (two-tenths of a percent). Further, with appropriate, precise, non-pharmacological
 10 measures to protect high-risk vulnerable populations and settings selectively, the infection fatality
 11 rate may be brought even lower.¹²⁷ The study author’s conclusion about the fatality rate is markedly
 12 lower than the rate predicted at the outset of the infection. In other words, now that we have
 13 implemented measures to protect the most vulnerable among us, the pandemic is no longer as
 14 calamitous as once anticipated.

15 101. On October 4, 2020, public health experts and medical practitioners joined together to adopt
 16 a formal declaration that public health measures should refocus on specific protections for the
 17 vulnerable population, immediately allow society to return to normal, with hygiene measures, and
 18 warn that shutting society down “will cause irreparable damage with the underprivileged
 19 disproportionately harmed.”¹²⁸

20
 21
 22 ¹²⁷ Ioannidis, *Infection Fatality Rate of COVID-19 inferred from Seroprevalence Data*, Bulletin of the World Health Organization, October 14, 2020 (online). Exhibit 95 hereto incorporated herein.

23 ¹²⁸ The scientists and medical practitioners included Dr. Martin Kulldorff, professor of medicine at Harvard
 24 University, a biostatistician, and epidemiologist with expertise in detecting and monitoring infectious disease outbreaks
 25 and vaccine safety evaluations; Dr. Sunetra Gupta, professor at Oxford University, an epidemiologist with expertise in
 immunology, vaccine development, and mathematical modeling of infectious diseases; and Dr. Jay Bhattacharya,
 professor at Stanford University Medical School, a physician, epidemiologist, health economist, and public health
 policy expert focusing on infectious diseases and vulnerable populations As of the filing of this complaint, over 12,000

1 102. On October 11 and 15, 2020, WHO reiterated its position that world leaders not depend on
 2 lockdowns to control COVID-19 due to their “devastating global impact,” stressing a balance
 3 between the needs of society to reopen and a reduction of the number of cases:

4 We really do have to learn how to coexist with this virus in a way that doesn’t
 5 require constant closing down of economies... robust defenses against the virus must
 6 be put in place... such as testing, contact tracing and isolation. It also involves
 communities adhering to public health guidelines such as wearing masks, physical
 distancing and practicing good hygiene.¹²⁹

7 103. On September 8, 2020, Lund University in Sweden published a study in Science Daily as a
 8 result of which it concluded “[s]inging doesn’t need to be silenced.”¹³⁰ Aerosol researchers studied
 9 the amount of particles we emit when we sing. They found when the singers wore a simple face
 10 mask, it “caught most of the aerosols and droplets.” Jakob Löndahl, a senior researcher in aerosol
 11 technology at Lund University opined that “[s]inging does not need to be silenced, but presently it
 12 should be done with appropriate measures to reduce the risk of spreading infection.”

13 104. The CDC Considerations for Events and Gatherings do not suggest singing not be allowed.
 14 They agree with the conclusion of the Lund University researchers in stating that “[m]asks are
 15 strongly encouraged in settings where individuals might raise their voice *e.g.*, shouting, chanting,
 16 singing.”¹³¹ Likewise, the CDC does not recommend against singing for communities of faith.¹³²

17 105. John Schwartzberg, clinical professor emeritus of infectious diseases and vaccinology at
 18

19 medical and public health scientists and almost 35,000 medical practitioners have signed onto the declaration. Exhibit
 98 hereto incorporated herein.

20 ¹²⁹ Bacon, *WHO Discourages Lockdowns as US Hospitalizations Climb; 11 States set Records for new COVID-19*
Cases, USA Today, Oct. 11, 2020. Exhibit 133 hereto incorporated herein.

21 ¹³⁰ Lund University, *Could Singing Spread COVID-19?*, Science Daily, September 8, 2020. Exhibit 93 hereto
 22 incorporated herein.

23 ¹³¹ Centers for Disease Control and Prevention, *Considerations for Events and Gatherings*, October 29, 2020.
 copy Exhibit 5 hereto incorporation herein.

24 ¹³² Centers for Disease Control and Prevention, *Considerations for Communities of Faith*, October 29, 2020.
 Exhibit 6 hereto incorporated herein.

1 University of California, Berkeley, confirmed that simple conduct measures can mitigate risk
 2 indoors. Maintaining six feet of space between individuals and wearing a mask renders a ride on
 3 mass transit a medium-risk activity whereas riding in a crowd with no mask would be a “high-risk
 4 nightmare.” He noted as well that the risk depends on each individual’s health and susceptibility to
 5 COVID-19.¹³³

6 106. On October 30, 2020, a group of German scientists published, “The Risk of Indoor Sports
 7 and Culture Events for the Transmission of Covid-19 (Restart-19),” which studied “mass gathering
 8 events (“MGE”)” that were banned worldwide “as they are supposed to pose a considerable risk for
 9 transmission of COVID-19.” They “investigated transmission risk of SARS-CoV-2 by droplets and
 10 aerosols during an experimental indoor MGE (using N95 masks and contact tracing devices)” and
 11 stated “[o]verall, the expected additional effect of indoor MGE on burden of infections is low if
 12 hygiene concepts are applied and adequate ventilation exists.” The One Sentence Summary was
 13 that: “Seated indoor events, when conducted under hygiene precautions and with adequate
 14 ventilation have small effects on the spread of COVID-19.”¹³⁴

15 107. The Mayo Clinic has found that “[m]ost people who have coronavirus disease 2019
 16 (COVID-19) recover completely within a few weeks. . . . Older people and people with many
 17 serious medical conditions are the most likely to experience lingering COVID-19 symptoms. The
 18 most common signs and symptoms that linger over time include: fatigue, cough, shortness of breath,
 19 headache, joint pain.”¹³⁵

20 THE SHUTDOWN ORDERS

21 ¹³³ Savidge, *How Risky is My BART Ride? Coronavirus Remakes Bay Area Public Transit*, The Mercury News,
 22 June 25, 2020. Exhibit 124 hereto incorporated herein.

23 ¹³⁴ Moritz, Gottschick, Horn, *et al.*, *The Risk of Indoor Sports and Culture Events for the Transmission of COVID-19 (Restart-19)*, medRxiv, November 3, 2020. Exhibit 97 hereto incorporated herein.

24 ¹³⁵ Mayo Clinic Staff, *COVID-19 (coronavirus): Long-Term Effects*, Mayo Clinic. Exhibit 96 hereto incorporated
 25 herein.

108. On the grounds set forth above, plaintiffs challenge the following orders, ordinances, and advisories issued by the state:

- a. Newsom Executive Order No. 33-20, March 19, 2020. Exh. 16.¹³⁶
- b. CA Statewide Public Health Officer Order, August 28, 2020. Exh. 25.¹³⁷
- c. CA Blueprint for a Safer Economy. Exh. 26-1.¹³⁸

¹³⁶ The Executive Order provides, in pertinent part:

[A]ll residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. . . . Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians. . . .

¹³⁷ The order provides, in relevant part:

1. The updated framework for reopening, which shall be known as California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe [aka Blueprint for a Safer Economy], will rely on a set of Tiers corresponding to specific epidemiological profiles based on indicators of disease burden including case rates per capita and percent of positive covid-19 tests and proportion of testing and other covid-19 response efforts addressing the most impacted populations within a county. For each progressive Tier, this framework will permit a broader range of reopening guided by risk-based criteria pertinent to each sector. I may modify the epidemiological criteria for each Tier as well as the sectors, businesses, establishments, or activities within the Tiers as necessary based on the latest available public health information and research to protect public health and safety. The up-to-date Tier profiles and those sectors, businesses, establishments, or activities that are permitted to open in each Tier will be posted (along with necessary modifications), at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID19/COVID19CountyMonitoringOverview.aspx>.
2. . . .
3. Conversely, a local health jurisdiction must also close sectors according to their respective county's Tier consistent with the timeline and procedures set forth in California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.

¹³⁸ The Blueprint provides, *inter alia*:

- d. CA Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.¹³⁹
- e. CA Essential Workforce. Exh. 28.¹⁴⁰
- f. *CA COVID-19 INDUSTRY GUIDANCE: Places of Worship and Providers of Religious Services and Cultural Ceremonies*, July 29, 2020. Exh. 32.¹⁴¹
- g. *Guidance for the Prevention of COVID-19 Transmission for Gatherings*, November 13, 2020. Exh. 40.¹⁴²

California has a blueprint for reducing COVID-19 in the state with revised criteria for loosening and tightening restrictions on activities. Every county in California is assigned to a tier based on its test positivity and adjusted case rate for tier assignment.

¹³⁹ Blueprint Activity and Business Tiers mandates the following with respect to places of worship:

Widespread – Tier 1	Substantial – Tier 2	Moderate – Tier 3	Minimal – Tier 4
Outdoor Only with modifications	Open indoors with modifications Max 25% capacity or 100 people, whichever is fewer	Open indoors with modifications Max 50% capacity or 200 people, whichever is fewer	Open indoors with modifications Max 50% capacity

¹⁴⁰ The Essential Workforce provides, in relevant part:

In accordance with this order, the State Public Health Officer has designated the following list of “Essential Critical Infrastructure Workers” to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security.

* * * * *

8. Government Operations and Other Community-Based Essential Functions

* * * * *

16. Clergy for essential support and faith-based services that are *provided through* streaming or other technologies that support physical distancing and state public health guidelines, (Emphasis added.)

¹⁴¹ The Industry Guidance provides, in pertinent part:

Places of worship should continue to provide services through alternative methods (such as via internet live and/or recorded streaming, telephone, drive-in, etc.) whenever possible.

* * * * *

Children should remain in the care of those in their household unit and not interact with children of other parties at any time while visiting facilities. Close play areas and discontinue activities and services for children where physical distancing of at least six feet cannot be maintained.

* * * * *

Remove from service or find low-community touch alternatives for communal/religious water containers such as fonts, sinks, and vessels.

* * * * *

Discontinue singing (in rehearsals, services, etc.), chanting, and other practices and performances where there is increased likelihood for transmission from contaminated exhaled droplets.

¹⁴² This Guidance provides, in pertinent part:

h. *CA COVID-19 General Checklist for Places of Worship and Providers of Religious Services and Cultural Ceremonies*, July 1, 2020. Exh. 41.¹⁴³

i. *CA Regional Stay At Home Order*, December 3, 2020. Exh. 144.¹⁴⁴

109. On the grounds set forth above, plaintiffs challenge the following orders, ordinances, and advisories issued by the County:

a. SCC Ordinance NS-9.21, adopted August 11, 2020. Exh. 49.

b. SCC Order of the Health Officer of the County of Santa Clara Establishing Revised Mandatory Risk Reduction Measures Applicable to all Activities and Sectors to Address

People who wish to engage in political, artistic, or other forms of expression or in religious expression and practice are strongly encouraged to find means of expression that do not involve in-person gatherings or to wait to gather in person until those activities are permitted by the Blueprint for a Safer Economy. However, because this guidance offers safer ways to operate in the colder climate, with higher likelihood of rain, associated with the time of year we now enter, the safeguards in this guidance apply as well to activities protected by the First Amendment and those activities are not prohibited if conducted in accordance with this guidance.

* * * * *

All persons planning to host or participate in a private gathering, as defined above, must comply with the requirements identified below

1. Attendance

a. Gatherings that include more than 3 households are prohibited.

* * * * *

2. Location: Gatherings Must be Outdoors for Counties in the Purple Tier

a. Gatherings that occur outdoors are significantly safer than indoor gatherings. All gatherings must be held outside in the Purple Tier, and indoor gatherings are strongly discouraged in Red, Orange and Yellow Tiers.

¹⁴³ The Checklist provides, in relevant part:

Provide services through alternative methods such as internet streaming, telephone, drive-in, etc.

Remove or find low-community-touch alternatives for communal/religious water containers.

¹⁴⁴ The Order provides, in pertinent part:

a. All gatherings with members of other households are prohibited in the Region except as expressly permitted herein.

b. . . .

c. Worship and political expression are permitted outdoors, consistent with existing guidance for those activities

the COVID-19 Pandemic, October 5, 2020. Exh. 62.¹⁴⁵

c. *SCC Mandated Social Distance Protocol*. Exh. 70.

d. *SCC Mandatory Directive: Gatherings*, July 14, 2020 (revised November 16, 2020).

Exh. 70-3.¹⁴⁶

e. *SCC Mandatory Directive: Capacity Limitations*. November 15, 2020 (revised December 4, 2020). Exh. 159.¹⁴⁷

¹⁴⁵ The Order states, in relevant part:

Participants in gatherings of any size must adhere to Health Officer directives applicable to gatherings, including restrictions on the size of gatherings, and also the Social Distancing and Face Covering Requirements

* * * * *

c.1. All businesses must prepare, submit to the County, and implement a "Social Distancing Protocol" for each facility or worksite at which any personnel or members of the public may be present, using the form identified in Paragraph 3 below. The Social Distancing Protocol must confirm that the business is achieving the applicable requirements listed in that form, which include important mandates regarding worker and customer safety.

* * * * *

3. The Social Distancing Protocol must be completed using the fillable webform and submitted to the County Public Health Department at www.COVID19Prepared.org. All Social Distancing Protocols will be stored and available in a publicly accessible database.

4. The Social Distancing Protocol must be completed by a person authorized to complete and sign it on behalf of the business, and it must be signed under penalty of perjury. All businesses must provide evidence of implementation of their Social Distancing Protocol to any authority enforcing this Order upon demand.

* * * * *

13. Prohibited Business Operations and Activities. In addition to complying with the State Order's prohibitions on certain business operations and activities, businesses and individuals must comply with any directives or orders of the Health Officer suspending certain business operations or activities or requiring specified facilities to close.

¹⁴⁶ This Directive provides, among other things:

The maximum number of people allowed at an outdoor gathering is specified in the Mandatory Directive on Capacity Limitations. This includes everyone present, such as hosts, workers, and guests. The space must be large enough so that everyone at a gathering can maintain at least 6-foot social distance from anyone (other than people from their own household).

Indoor gatherings may not be allowed depending on the County's current tier under the State's Blueprint for a Safer Economy. See the "State Gatherings Rules" box at the top of this Directive for information on current State rules. When indoor gatherings are allowed, the maximum number of people allowed at an indoor gathering is specified in the Mandatory Directive on Capacity Limitations. This includes everyone present, such as hosts, workers, and guests.

¹⁴⁷ With respect to places of worship, this Directive Provides, in pertinent part:

Business/Entity/Activity Type	Indoors	Outdoors
-------------------------------	---------	----------

f. SCC *Mandatory Directive for Implementing State's Regional Stay At Home Order*,
December 4, 2020. Exh. 159.¹⁴⁸

g. SCC *Requirements for all Businesses*. Exh. 81.¹⁴⁹

110. On the grounds set forth above, plaintiffs challenge any orders, ordinances, advisories and/or policies of enforcement that supersede or modify the foregoing challenged orders insofar as they apply to or restrict the rights of religious assembly, speech, and/or practices.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF FREEDOM OF ASSEMBLY

(All Plaintiffs against all Defendants)
(42 U.S.C. § 1983)

Plaintiffs hereby incorporate the foregoing allegations as though fully set forth herein.

111. The right to peacefully assemble is a right protected and guaranteed by the First Amendment of the United States Constitution. The liberties under the First Amendment apply to the states and their political subdivisions through the Fourteenth Amendment.

112. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill Plaintiffs' right to assemble, speak and practice religion in places of worship by prohibiting and/or restricting religious assembly and practice including sung expression in praise and worship to God.

113. When the state prohibits assembly the state silences the voice of the church, separate pastors

Gatherings (e.g., moving showings, political events, weddings, funerals, worship services)	Prohibited>	Worship services, political events, and cultural ceremonies allowed up to 100 people
--	-------------	--

¹⁴⁸ The Directive implements the state's *Regional Stay At Home Order*, (exh. 144) in advance of the state's implementation of that order: "[T]he County Health Officer and other Health Officers in the Bay Area have determined it is necessary to implement the State Regional Stay At Home Order on a faster timeline than the State's regional trigger."

¹⁴⁹ This document provides, in relevant part:

Open outdoors up to 200 people (follow all County Health Officer Order requirements

1 from believers, abolishes faith practices in the church, stops church growth, and prevents prayer,
2 healing, and salvation for lost souls and the sick who cannot meet in the church.

3 114. Plaintiffs and the members of their congregations have no adequate remedy at law.

4 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth
5 below.

6
7
8
9 **SECOND CLAIM FOR RELIEF**
10 **FREE EXERCISE OF RELIGION**
(All Plaintiffs Against all Defendants)
11 (42 U.S.C. § 1983)

12 Plaintiffs hereby incorporate the foregoing allegations as though fully set forth herein.

13 115. The right to free exercise of religion is a right protected and guaranteed by the First
14 Amendment of the United States Constitution. The liberties under the First Amendment apply to the
15 states and their political subdivisions through the Fourteenth Amendment. The right to free exercise
16 of religion includes the right to assemble in the Lord's house to practice religion, sing praise and
17 worship God, prayer, the sacraments of holy communion and baptism, teaching the word of God
18 and other faith practices described herein. The right includes the right to be free of state imposed
19 "alternative" services and religious practices and requiring Clergy to perform essential faith based
20 services virtually while other essential secular workers are allowed to perform services in person.

21 116. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill
22 Plaintiffs' right to free exercise of religion in places of worship by prohibiting and/or restricting
23 religious assembly and practice including sung expression.

24 117. When the state prohibits assembly and sung worship the state abolishes faith practices in the
25 church. When the state dictates alternative religious practices the state impinges on the free exercise

1 of religion.

2 118. Plaintiffs and the members of their congregations have no adequate remedy at law.

3 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth
4 below.

5 **THIRD CLAIM FOR RELIEF**
6 **EQUAL PROTECTION**
(All Plaintiffs Against all Defendants)
7 U.S.C. § 1983)

8 The foregoing allegations are incorporated as though fully set forth herein.

9 119. The right to equal protection under the law is a right protected and guaranteed by the First
10 Amendment of the United States Constitution. The liberties under the First Amendment apply to the
11 states and their political subdivisions through the Fourteenth Amendment.

12 120. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill
13 Plaintiffs' Church Rights by prohibiting and/or restricting the exercise of constitutional rights.

14 121. Defendants have not applied the same laws, orders, regulations, rules and guidelines or
15 enforcement thereof to comparator gatherings in airport terminal gates, mass transit, political or race
16 demonstrations, youth activities, and other group activities.

17 122. The state has included "Clergy for essential support and faith-based services" in its
18 designation of "Essential Critical Infrastructure Workers" that "work to protect communities, while
19 ensuring continuity of functions critical to public health and safety . . . ,” yet the state has allowed in
20 person secular workforces but prohibited in person religious workforces.

21 123. Religion is a suspect class to which plaintiffs and the members of their congregations
22 belong. Defendants have created a religion-based classification to the detriment of plaintiffs and the
23 members of their congregations.

24 124. Plaintiffs and the members of their congregations have no adequate remedy at law.

25 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth

below.

FOURTH CLAIM FOR RELIEF
FREEDOM OF SPEECH
 (42 U.S.C. § 1983)
 (All Plaintiffs Against all Defendants)

Plaintiffs incorporate the foregoing allegations as though set forth in full herein.

125. The right to free speech is a right protected and guaranteed by the First Amendment of the United States Constitution. The liberties under the First Amendment apply to the states and their political subdivisions through the Fourteenth Amendment.

126. Religious assembly is an expression based gathering that is spoken, read, sung, recited and heard such expression includes prayer, worship, praise, thanksgiving, rejoicing, adoration, confession, testifying, witnessing, intercession, comfort, supplication, teaching and preaching and hearing the Word of God.

127. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill Plaintiffs' right to free speech in places of worship by prohibiting and/or restricting religious assembly and practice including sung expression.

128. An assembly to practice religion and an assembly to promote a political campaign or protest racial or social injustice or youth activities for education and classes are all to some extent expression-based gatherings.

129. By enacting and enforcing the Challenged Orders that prohibit or restrict or burden certain types of religious expression such as sung expression, and that do not similarly burden non-religious comparator expression-based gatherings, defendants have presented a content and/or viewpoint-based restriction on speech.

130. When the state prevents assembly in places of worship or prohibits sung worship in places of worship the state silences the voice of the church and its members to sing, speak, teach, preach, and pray.

131. Plaintiffs and the members of their congregations have no adequate remedy at law.

WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth below.

FIFTH CLAIM FOR RELIEF
UNREASONABLE SEIZURE OF PROPERTY
(All Plaintiffs Against all Defendants)
(43 U.S.C. § 1983)

Plaintiffs incorporate the foregoing allegations as though set forth in full herein.

132. The right to be secure against unreasonable seizure of property including unreasonable control over and interference with Plaintiffs' possessory interest in church property is a right protected and guaranteed by the Fourth Amendment of the United States Constitution. The liberties under the Fourth Amendment apply to the states and their political subdivisions through the Fourteenth Amendment.

133. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill Plaintiffs' possessory interest in and right to possess and control religious buildings, places of worship and the property on which they are situated throughout the state and county.

134. Plaintiffs and the members of their congregations have no adequate remedy at law.

WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth below.

SIXTH CLAIM FOR RELIEF
PRIVILEGES & IMMUNITIES
(All Plaintiffs Against all Defendants)
(43 U.S.C. § 1983)

Plaintiffs incorporate the foregoing allegations as though set forth in full herein.

135. The County has enacted Ordinance No. NS-9.291 (the "Ordinance").

136. The Ordinance conflicts with the California Emergency Services Act (the "Act"). Cal. Gov. C. § 8550, et seq. Section 8665 of the Act limits penalties at \$1,000 and 6 months in jail, if

1 convicted. The Ordinance, to the contrary, assesses fines up to \$5,000 and imposes sentences up to
2 one year in jail. The Ordinance also assesses administrative costs, late penalties, and non-reciprocal
3 attorneys' fees.

4 137. The Ordinance conflicts with County Ordinance A1-28 (general penalty for violation
5 declared a misdemeanor). That ordinance provides any person convicted of a misdemeanor under
6 any provision of the county's code shall be punishable by a fine not more than \$1,000,
7 imprisonment in the county jail for a period not to exceed six months, or both. The Ordinance, to
8 the contrary, assesses fines up to \$5,000 and imposes sentences up to one year in jail. The
9 Ordinance also assesses administrative costs, late penalties, and non-reciprocal attorneys' fees.

10 138. The Ordinance conflicts with County Ordinance A1-42 (civil actions and penalties for
11 nuisance abatement). That ordinance limits the civil penalty for the first violation of the nuisance
12 abatement ordinance to \$2,500 per day or portion of a day during which the public nuisance exists.
13 The Ordinance, to the contrary, assesses fines up to \$5,000 and imposes sentences up to one year in
14 jail. The Ordinance also assesses administrative costs, late penalties, and non-reciprocal attorneys'
15 fees.

16 139. The Ordinance provides for notice of a violation via electronic mail, a 10-day abbreviated
17 appeal period, and a "prompt" administrative hearing with no definition of the term "prompt."

18 140. The Ordinance was enacted for an indefinite period with no expiration or termination date
19 and does not specify the laws, orders, guidance, or protocols it purports to enforce or those of the
20 myriad provisions that are subject to punishment.

21 141. The Ordinance vests broad, unchecked, "sole discretion" in "Enforcement Officers" as to (a)
22 whether a violation has occurred, (b) whether to issue a Notice of Violation or take any other action,
23 (c) whether to provide a grace period to correct an alleged violation, (d) making a determination
24 whether a violation has been corrected, and (e) how to gain compliance.

142. The Ordinance does not require disclosure of the identity of the complaining party, which is kept confidential, and the complaint is not made under penalty of perjury. The Ordinance denies the right to cross-examine the accuser for personal knowledge, bias, credibility, or malice. The Ordinance eliminates formal rules of evidence; in fact, it does not require reliable evidence or any corroboration. It also shifts the burden to the citizen to prove the correction. The Hearing Officer is selected and paid for by the County and he or she is advised *ex parte* by County Counsel. The decision of the Hearing Officer is final without any right of appeal. The Ordinance does not have a reciprocal attorneys' fees clause if the citizen prevails.

143. The Fourteenth Amendment of the Constitution provides that "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

144. The Ordinance violates the Fourteenth Amendment guarantee of privileges and immunities in that:

- a. By allowing the County to control all three branches – judicial (Hearing Officer, executive (Enforcement Officer), and legislative (Public Health Officer) – the County has denied citizens the checks and balances and separation of powers required for due process.
- b. The Ordinance deprives citizens of life, liberty, or property without due process of law, contrary to the Fifth Amendment of the Constitution.
- c. The Ordinance is vague, overbroad, and indefinite, thus depriving citizens of due process of law, contrary to the Fifth Amendment.
- d. The Ordinance does not guarantee citizens a speedy and public trial, contrary to the Sixth Amendment.
- e. The Ordinance deprives citizens of the right to a jury trial guaranteed by the Sixth Amendment of the Constitution.
- f. The Ordinance does not require the County to inform citizens of the nature and cause

of the accusation against them, contrary to the Sixth Amendment of the Constitution.

g. The Ordinance does not require citizens to be confronted with the witnesses against them, contrary to the Sixth Amendment.

h. The Ordinance deprives citizens of the right to trial by jury even though penalties imposed are a minimum of \$5,000, contrary to the Seventh Amendment of the Constitution.

i. The Ordinance imposes criminal penalties without requiring the County to prove alleged offenses beyond a reasonable doubt, contrary to the 14th Amendment of the Constitution.

145. Plaintiffs and the members of their congregations have no adequate remedy at law.

WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth below.

**SEVENTH CLAIM FOR RELIEF
DECLARATORY RELIEF**

(All Plaintiffs Against All Defendants)
(28 U.S.C. § 2201, FRCP Rule 59)

The foregoing allegations are incorporated as though fully set forth herein.

146. A controversy has arisen and now exists between the parties that is ripe for an expedited summary proceeding, justifying docketing the case for early hearing, with declaratory judgment by the Court as to the Parties' rights and obligations towards each other that will "terminate the controversy" giving rise to the proceeding.

147. This case involves issues of constitutional law on undisputed or relatively undisputed facts related to ongoing religious activities of Plaintiffs and related challenged orders of Defendants. This action is ripe for a summary proceeding and justifying docketing the case for early hearing as on a motion.

148. Plaintiffs contend that defendants' shutdown orders closing and restricting religious gatherings have caused, and are continuing to cause harm to the souls and mental health of people

that outweighs the potential risk of spread of Covid-19, which can be mitigated by simple personal conduct measures during religious gatherings, and Plaintiffs contend that defendants have unlawfully suspended and deemed the exercise of constitutional rights to be nonessential activities and/or non-critical or a public nuisance to our society, and defendants have criminalized and/or punished and/or chilled the exercise of constitutional rights, and have unlawfully banned religious practices of Plaintiffs and their congregations including sung worship, and defendants have unlawfully dictated new alternative religious practices to churches and congregations, and defendants have unreasonably seized indefinite control of places of worship without due process or compensation, and have imposed special burdens and restrictions and closures on religious gatherings without equal protection under the law applied to and/or enforced against similar secular congregating activities of comparator gatherings such as airports, mass transit, protests, and secular children and youth education, programs and activities, and Plaintiffs contend that the challenged order are facially or as applied unconstitutional and void for vagueness, uncertainty, indefinite duration, and for infringement and/or chilling the exercise of Plaintiffs' rights under the 1st, 4th, 5th, 6th, 7th, 8th and/or 14th Amendments to the United States Constitution.

149. Plaintiffs are informed and believe that defendants dispute Plaintiffs' contentions.

150. Plaintiffs and the members of their congregations have no adequate remedy at all.

WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth below.

PRAYER AND DEMAND FOR RELIEF

WHEREFORE, plaintiffs on behalf of their church and congregations pray for relief as set forth below.

1. Temporary restraining order, preliminary injunction, and permanent injunction to enjoin defendants, and their agents, from enforcing the challenged orders against plaintiffs and their

pastors, congregations and places of worship, except to the same extent applied to and enforced against the congregating activities of comparator gatherings, including at airports, mass transit, peaceful demonstrations, and secular children and youth groups as applicable.

2. An order and declaratory judgment declaring each of the challenged orders and ordinances are unconstitutional, facially and/or as applied, under the 1st, 4th, 5th, 6th, 7th, 8th and/or 14th Amendments of the United States Constitution and declaring as follows:

- (a) Defendants' orders have caused, and are continuing to cause, harm to the minds, souls and mental health and well-being of people, which harm outweighs the potential risk of spread of Covid-19, which can be mitigated by simple personal conduct measures during religious gatherings;
- (b) Defendants' orders have unlawfully suspended and deemed constitutional rights to be nonessential activities and/or non-critical or a public nuisance to our society;
- (c) Defendants have criminalized, punished and/or chilled the exercise of constitutional rights;
- (d) Defendants have unlawfully banned religious practices of Plaintiffs and their congregations including worship;
- (e) Defendants have unlawfully dictated new alternative religious practices to churches, clergy and congregations;
- (f) Defendants have unreasonably seized control of places of worship for an indefinite period without due process or compensation,
- (g) Defendants have imposed special burdens and restrictions and closures on religious gatherings and places of worship and prohibited religious education and programs for children and youth in places of worship without equal protection under the law applied to and/or enforced against similar secular congregating activities of comparator

gatherings such as airports, mass transit, protests, and secular children and youth education, programs and activities;

3. All relief of whatever kind available under FRCP 56 and 59 including the right to a speedy trial and resolution of the claim for declaratory judgment.

4. Reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b) and other applicable law and statutes;

5. Costs incurred herein; and,

6. Such other and further relief as the Court deems just and proper.

Dated: December 9, 2020

CANNISTRACI LAW FIRM



Counsel for Plaintiffs